

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**LABORERS' PENSION FUND and)
LABORERS' WELFARE FUND OF THE)
HEALTH AND WELFARE DEPARTMENT)
OF THE CONSTRUCTION AND GENERAL)
LABORERS' DISTRICT COUNCIL OF)
CHICAGO AND VICINITY, and JAMES S.)
JORGENSEN, Administrator of the Funds,)**

Plaintiffs,

v.

**TUNNEL VISION, INC., an Illinois corporation)
and JOHN SMYTH, individually,)**

Defendants.

Case No. 06 C 4929

Judge Filip

Magistrate Judge Susan E. Cox

MOTION TO REINSTATE AND CONFESS JUDGMENT

Now come Plaintiffs Laborers' Pension Fund and Laborers' Welfare Fund for the Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity and James S. Jorgensen, Administrator of the Funds ("Funds"), by and through their attorney, Amy Carollo, and hereby file the Plaintiffs' Motion to Reinstate and Confess Judgment.

In support of this Motion, the Plaintiffs state as follows:

1. This Court dismissed this case with leave to reinstate on or before August 15, 2008.
2. On or about April 4, 2008, the Parties signed a Settlement Agreement and Stipulation to Dismiss ("Agreement"). A copy of this Settlement Agreement and Stipulation to Dismiss is attached as Exhibit A.
3. The Defendants entered into an Installment Note ("Note") and a Guaranty of Payment and Indemnification ("Guaranty") with the Funds in the amount of \$12,916.81. In the

event that the Defendants defaulted on the Note, the parties agreed that a consent judgment would be entered in favor of the Funds and against Defendants Tunnel Vision Inc. and John Smyth in the amount of \$12,916.81, less whatever amounts the Defendants paid towards the Note. The Parties further agreed that the Defendants would pay all post-judgment interest and all reasonable attorneys' incurred by the Funds in obtaining the Consent Judgment. See Exhibit A, ¶¶1-3.

4. Upon signing the Note and Guarantee, the Defendants were to pay \$2,716.33 as a down payment. Payments of \$2,550.12 were due monthly, starting May 1, 2008 and ending August 1, 2008.

5. On April 11, 2008, the Defendants paid \$2,716.33. A copy of the Payment Plan Worksheet detailing payment dates and amounts is attached as Exhibit B.

6. On May 23, 2008, the Defendants paid \$2,550.12. The Defendants paid an additional \$154.40 in liquidated damages. See Exhibit B.

7. The Defendants failed to submit its June 2008 forward Note payments and May 2008 forward benefit and dues reports and corresponding payments and therefore is in default. Accordingly, Plaintiffs respectfully request that this Court reinstate this case and enter judgment in favor of the Plaintiffs and against Defendants Tunnel Vision, Inc. and John Smyth in the amount of \$9,341.02 representing \$9,026.02 due on the defaulted Installment Note and \$315.00 in attorneys' fees and costs incurred by the Funds in obtaining this Consent Judgment. See Affidavit of Jim Fosco attached as Exhibit C, ¶ 5 and Declaration of Amy Carollo, attached as Exhibit D.

WHEREFORE, the Plaintiffs respectfully request that this Court reinstate this case and confess judgment in favor of Plaintiffs and against Defendants Tunnel Vision, Inc. and John Smyth in the amount of \$9,341.02.

Dated: July 31, 2008

Office of Fund Counsel
111 W. Jackson Blvd., Suite 1450
Chicago, IL 60604
312/692-1540

Respectfully submitted,

Laborers' Pension Fund, et al.

By: /s/ Amy Carollo